

## EQUIPMENT AND PARTS SALES TERMS & CONDITIONS

- 1. Agreement.** These Standard Terms and Conditions (the "**Terms and Conditions**") are attached to and form part of the purchase order (the "**Purchase Order**") for the purchase of the goods referred to in the Purchase Order (the "**Goods**"), and together with any information or documents incorporated herein by reference, contain the entire agreement (the "**Agreement**") between Pro Mac Manufacturing Ltd. (the "**Seller**") and the purchaser (the "**Purchaser**") of the Goods. Any terms proposed by the Purchaser that are additional or contrary to these Terms and Conditions are hereby objected to unless Seller otherwise expressly agrees in writing.
- 2. Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of British Columbia and Canada applicable therein, excluding conflict of laws rules. Other than for collection or equitable actions against the Purchaser, any cause of action arising hereunder or related in any way hereto shall be brought only in the Province of British Columbia and the Purchaser hereby irrevocably submits to the jurisdiction of such courts. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods shall not have any application.
- 3. Delivery and Title.** All quoted delivery dates and/or periods are approximate. The delivery periods shall commence when the Seller has acknowledged receipt of complete specifications and/or applicable documents required to effect shipment, such as a Purchaser purchase order, payment, letter of credit, import license, exchange permit, and shipping instructions. The Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in this contract; and all such installments, when separately invoiced, shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve the Purchaser of its obligations to accept remaining deliveries. Claims for shortages or other errors must be made in writing to the Seller within thirty (30) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Purchaser. The Seller is authorized to execute any shipper's or carrier's bill of lading or contract for shipment irrespective of any limitations therein. Notwithstanding the foregoing, title to the Goods, and all accessories to or products or proceeds of the Goods, shall remain with the Seller until payment in full of the purchase price and of any other amounts owing by the Purchaser. To the extent legal title to the Goods shall be deemed by law to pass to the Purchaser at the time of delivery and prior to performance of all of the Purchaser's obligations hereunder, equitable title shall remain with the Seller until payment in full of the purchase price and the Purchaser shall grant, and by acceptance of the Goods shall be deemed to have granted, to the Seller, a first security interest and charge in the Goods to secure payment of the purchase price and any other amounts owing by the Purchaser and performance of all the Purchaser's obligations under this contract, as well as the right to make any filings and take any actions necessary in order to perfect such security interest. The Seller may reclaim any Goods delivered to the Purchaser or in transit if the Purchaser shall fail to make payments when due.

4. **Risk of Loss.** The Seller shall not be liable for any loss, damage or delay in manufacture or shipment due to causes beyond the Seller's control and which cannot be prevented by reasonable diligence, and shall include fire, flood, windstorm, earthquake, other acts of God, strikes, labor troubles, civil commotion, riot, war, civil or military authority priorities, epidemics, quarantine restrictions, delays in transportation, railcar shortages, failure to receive materials, changes required by engineering, acts of the Purchaser, and inability to obtain necessary labour, materials or manufacturing facilities. Delay resulting from any such cause or delay in manufacture shall extend shipping dates a reasonable time according to such delay and conditions at Seller's location of manufacturing. The Seller shall in no event be liable for any direct, indirect or consequential damages arising from delay irrespective of the reasons therefore.
5. **Shipment.** Seller shall deliver the Goods ex-works. During shipment and during any return shipment to the Seller, the Purchaser shall bear all risk of loss thereto, and carry adequate insurance for any and all loss, damage or destruction to the Goods. Any charges the Seller may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of the Goods shall be the responsibility of the Purchaser. Method and route of shipment will be at the discretion of the Seller unless otherwise agreed upon.
6. **Storage.** If the Goods are not shipped within fifteen (15) days after notification to the Purchaser that they are ready for shipping, for any reason beyond the Seller's reasonable control, including the Purchaser's failure to give shipping instructions, the Seller may store such Goods at the Purchaser's risk in a warehouse or yard on the Seller's premises. In such event: (i) the Seller shall notify the Purchaser of the placement of Goods in storage; (ii) the Seller's delivery obligations shall be deemed fulfilled and all risk of loss or damage shall thereupon pass to the Purchaser; (iii) any amounts otherwise payable to the Seller upon delivery shall be payable upon presentation of Seller's invoices therefor; (iv) promptly upon submission of Seller's invoices the Purchaser shall reimburse the Seller for all expenses incurred by the Seller, such as preparation for, and placement into storage, handling, storage, inspection, preservation and insurance; and (v) when conditions permit and upon payment of all amounts due hereunder, the Seller shall assist and cooperate with the Purchaser in any reasonable manner with respect to the removal of any Goods which have been placed in storage. The Purchaser shall pay handling, transportation, and storage charges at the prevailing commercial rates on submission of invoices therefor.
7. **Descriptive Literature and Modifications.** Catalogues, product brochures, photographs and other illustrations are a general representation of the products offered but shall not be taken as precise and shall not form part of this Agreement. The Seller reserves the right to make changes in design, specifications or materials that in the Seller's opinion are an improvement or necessary because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.
8. **Price and Payment.** The Purchaser shall pay for the Goods in Canadian Dollars at the prices and on the payment terms described on the Purchase Order. The prices for the Goods pursuant to this Agreement are the Seller's prices for such Goods with the warranty provided for herein. If the Purchaser desires for the Seller to provide a greater or additional warranty then the Purchaser must notify the Seller before the Purchaser

accepts (or is deemed to accept) this Agreement, in which event the Seller will amend the Purchase Order to reflect higher sales prices reasonably compensating the Seller for assuming such additional exposure. Unless otherwise stipulated on the Purchase Order payment shall be due in full no later than thirty (30) days from the date of shipment. Payments not made when due shall bear interest at the rate of 2% per month from the date of shipment until paid in full. If, during the period of performance of an order, the financial condition of the Purchaser is determined by the Seller not to justify the terms of payment specified, the Seller may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this Agreement. If delivery is deferred, the Goods may be stored as provided herein and the Seller may submit a new estimate of costs for completion based on prevailing conditions. If the Purchaser defaults in any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving the Purchaser are initiated by or against the Purchaser, then the entire Purchase Order shall immediately become due and payable on demand and may include the Seller's reasonable cost of collection, or Seller, at its option without prejudice to its other lawful remedies, may defer, deliver or cancel this Agreement.

9. **Taxes and Other Costs.** All amounts payable hereunder are exclusive of all taxes, fees, customs, duties or tariffs now in force or enacted in the future. All such costs, duties, tariffs, taxes and fees shall be paid by the Purchaser unless the Purchaser provides a certificate of exemption or similar document exempting a payment from an applicable tax. If any government or body or similar authority determines that the Seller is liable for any such costs, duties, tariffs, taxes or fees, then the Purchaser shall promptly reimburse the Seller for any such liabilities paid by the Seller.
  
10. **Limited Warranty.** The Seller makes no warranties, guarantees or representations of any kind either expressed or implied, arising by law or otherwise that shall survive delivery of the Goods by the Seller to the Purchaser hereunder, except for the Seller's representations expressly set forth herein. To the extent the Seller has previously made any representations or statements that could be construed as a warranty and/or guarantee, such representations and statements are hereby superseded. The Seller warrants new equipment, so far as it is the Seller's own design and manufacture only, under normal use and service, and providing the equipment is operated properly, to be free from defects in materials and workmanship for a period of twelve (12) months after date of shipment. The Seller warrants new replacement parts, so far as it is the Seller's own design and manufacture only, under normal use and service, and providing these parts are installed properly, to be free from defects in materials and workmanship for a period of thirty (30) days after date of shipment. The Seller does not warrant rebuilt, repaired or exchange parts and equipment, **This limited warranty is in lieu of any other expressed or implied warranty including any implied warranty of merchantability or fitness for a particular purpose.** The Purchaser hereby waives all rights and remedies, warranties, guarantees, obligations or liabilities, expressed or implied, arising by law or otherwise with respect to all parts delivered including, without limitation, any obligations of the Seller with respect to any implied warranty of merchantability; any implied warranty arising from course of performance, course of dealing or usage of trade; any implied warranty of fitness; and any obligation or liability of the Seller arising from the negligence of the Seller, actual or imputed, or for loss of use, revenue or profit with respect to the Goods, for any liability

of the Purchaser to any third party, or any other direct, incidental or consequential damages. This limited warranty shall not apply to any of the following: (i) normal wear and tear; (ii) damage caused by misuse of the Goods; (iii) damage caused by non-observance of operating, maintenance and repair instructions; (iv) damage caused by unsuitable use; (v) damage caused by improper handling of Goods; (vi) equipment or parts which have been repaired or modified by the Purchaser without the Seller's prior express written consent; and (vii) equipment or parts which have been subjected to any repair, use or negligence, which, in the sole discretion of the Seller, has affected the condition or operation thereof. All repairs and replacements made by the Seller are subject to the same terms, conditions, limited warranty, disclaimer of warranty, and limitation of liability and remedy as apply to the original sale of the Goods. With respect to parts and components manufactured by others, the Seller's warranty is limited to the warranty offered by the manufacturer of the part or component. Effective upon shipment, the Seller hereby assigns to the Purchaser any and all warranties and claims which it may have received or to which it may be entitled from the manufacturer of any parts, or to which it may be legally entitled to the extent that the same are not extinguished by the sale of the parts.

THE FOREGOING WARRANTIES ARE EXCLUSIVE. THE GOODS ARE SOLD HEREUNDER AS IS, NO OTHER WARRANTIES APPLY TO THESE GOODS, AND NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WHETHER IN RELATION TO MERCHANTABILITY, HIDDEN DEFECTS, FITNESS FOR PARTICULAR PURPOSE, COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, NONINFRINGEMENT OR OTHERWISE IS GIVEN BY THE SELLER TO THE PURCHASER OR ANY OTHER PARTY.

- 11. Warranty Compensation and Reimbursement.** Purchaser shall notify the Seller prior to any repair if applying for warranty reimbursement. No warranty will be considered without the Purchaser first providing a completed Warranty Authorization Request form and subsequently obtaining a Warranty Authorization Number from the Seller.

**Troubleshooting and Repair Labour.** The labour hours and labour rate credited to the Purchaser for authorized warranty repairs shall be per the Promac Equipment Warranty Repair Guidelines, available on request. Repairs not listed shall be reimbursed at a reasonable rate as determined by the Purchaser.

In the event that any warrantable repair exceed the limits noted above, the excess is the responsibility of the Purchaser.

- 12. Return of Goods.** No Goods may be returned without Return Material Authorization (RMA) form completed by the Purchaser and accepted by the Seller. Unless agreed to by the Seller in advance, any authorized returns shall be sent to the Seller freight prepaid. Unless agreed to by the Seller in advance, any authorized returns will be subject to a restocking fee of 20%. Notwithstanding anything contained herein, any authorized returns will be subject to an inspection upon receipt by the Seller and any clean-up or rework required to make the Goods saleable will be deducted from the credit, in addition to the restocking charge. If the returned Goods are deemed not to be saleable, they will be returned to the Purchaser freight collect. Goods must be regular stocked parts to be eligible for return.

13. **Safety and Indemnification.** The Purchaser shall employ and maintain any and all safety guards, devices, warning signs, and features, and provide all warnings and instructions, which are required by law. The Purchaser in its use of the Goods shall comply with all present and future statutes, laws, ordinances, regulations and/or guidelines of any applicable jurisdiction or agency. The Purchaser shall ensure that its personnel are, at all times, educated and trained in the proper use and/or operation of the Goods and that the Goods are used in accordance with any and all applicable manuals, documentation and instructions. The Purchaser shall indemnify, defend and hold the Seller harmless from and against all claims, damages, losses, judgments, fees, expenses and costs, including legal fees, as incurred, arising out of or resulting from the Purchaser's failure to comply with the terms of the this Agreement.
14. **Technical and Other Confidential Information.** Any sketches, models, samples, or designs submitted by the Seller shall remain the property of the Seller and shall be treated as confidential information unless the Seller has in writing indicated otherwise. No use or disclosure of such sketches, models, and samples, or any design or production process or techniques revealed thereby, shall be made without the express prior written consent of the Seller.
15. **Purchaser's Property.** Any property of the Purchaser placed in the Seller's custody for performance of this Agreement is not covered by insurance, and no risk is assumed by the Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of the Seller.
16. **Severability.** If any provision or portion thereof of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof. It is expressly understood and agreed that each and every provision of this Agreement that provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the parties to be severable and independent of any other provision and to be enforced as such. The remaining provisions shall be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of the Agreement.
17. **Breach.** In the event either party hereto should breach any of the material terms and conditions of this Agreement, the aggrieved party shall notify the other party in writing. The offending party shall thereafter have ten 10 business days to correct the identified deficiency. In the event such deficiency is not rectified to the satisfaction of the aggrieved party, acting reasonably, then the aggrieved party shall be entitled to declare the Agreement null, void and of no further force and effect. In the event of the termination hereof for any reason, the Purchaser shall be obligated to pay the Seller for all Goods already provided.
18. **Miscellaneous.**
  - a. None of the provisions of this Agreement shall be deemed to have been waived by any act of or acquiescence on the part of Seller, its agents, subcontractors or employees, but only by an

- instrument in writing signed by an authorized representative of the Seller. No waiver by the Seller of any provisions of this Agreement shall constitute a waiver of any other provision or of the same provision on another occasion.
- b. It is expressly declared that this Agreement and the relationship between the parties hereby established do not constitute a partnership, joint venture or agency arrangement between them.
  - c. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Purchaser may not assign its rights or obligations under this Agreement in any way without the prior written consent of the Seller. The Seller may use subcontractors as it deems necessary.
  - d. This Agreement may be amended only in writing signed by each of the parties hereto.
  - e. If the Purchaser attempts to use, copy, disclose or transfer any portion of the confidential information in a manner contrary to the terms of this Agreement or in derogation of the Seller's rights, whether those rights are explicitly stated, determined by law or otherwise, the Seller shall have the right, in addition to any other legal remedies available, without the posting of a bond, to injunctive relief enjoining such acts, it being acknowledged by the Purchaser that all other remedies are inadequate and cumulative.
  - f. All notices required to be given hereunder shall be in writing. Notices shall be considered delivered and effective upon receipt when sent electronically with proof of reception or by registered or certified mail, addressed to the parties as set forth on the Purchase Order. Either party, upon written notice to the other, may change the address to which future notices shall be sent.
  - g. Should any act or omission of the Purchaser cause delays and/or an increase or decrease in the cost of the Seller's performance of this Agreement, an equitable adjustment to the timetable and/or amounts due under this Agreement shall be made. Upon its awareness of such act or omission affecting the schedule and/or costs, the Seller shall notify the Purchaser.
  - h. By shipping the Goods, or by receipt of the Goods, or by performing hereunder, the Purchaser agrees to the exclusive application of these Terms and Conditions. Reference to any form or communication of the Purchaser's shall not be deemed to be an acceptance of any terms and conditions therein, and any different or additional terms or conditions in any proposal, acknowledgment form or any other document of Purchasers is not deemed to be incorporated into this Agreement.

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